HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 28, 2015
84th Legislature, Number 58
The House convenes at 10 a.m.

Eighteen bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested are listed on the following page.

Alma Allen
Chairman
84(R) - 58

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 28, 2015
84th Legislature, Number 58

SUBJECT: Sunset review of the State Office of Administrative Hearings

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

1 absent — Hernandez

WITNESSES: For — (*Registered, but did not testify*: Cyrus Reed, Lone Star Chapter Sierra Club)

Against — None

On — (*Registered, but did not testify*: Tom Walston, Kim Dudish, and Cathleen Parsley, State Office of Administrative Hearings; Eric Beverly, Sunset Advisory Commission; Cheryl Garren, Texas Department of Public Safety)

BACKGROUND: The State Office of Administrative Hearings (SOAH) was established in 1991 to serve as an unbiased, independent administrative hearing tribunal for the state. SOAH's main activities include administrative hearings for agencies, license revocation hearings for the Texas Department of Public Safety (DPS), alternative dispute resolution, and tax hearings.

SOAH conducts hearings for 62 state agencies and local political subdivisions. After SOAH receives a request from a state agency or local governmental entity, it initiates the hearing process and on average completes a case within 100 days. Hearings can vary in length, from a few minutes to several weeks depending on the complexity of the case and any statutory requirements.

SOAH offers alternative dispute resolution proceedings, such as arbitration and mediation, to parties as a quicker and less expensive alternative to a full hearing. In 2007, the Legislature transferred to SOAH

cases involving disputes between the comptroller's office and taxpayers over the collection, receipt, administration, and enforcement of taxes and fees. Statute requires SOAH to maintain separate tax, utility, and natural resource conservation divisions and dictates special requirements for administrative law judges (ALJs) assigned to the tax division.

The chief ALJ serves as SOAH's executive director and is responsible for agency operations and policymaking because the agency does not have a governing board. The governor appoints the chief ALJ for a two-year term.

SOAH's primary office is located in Austin and it has seven field offices located throughout Texas. SOAH employed an average full-time equivalent of 107 employees in fiscal 2013. Most of the staff are ALJs who preside over the cases and issue proposals for decision. Almost 70 percent of the staff work in Austin, with the rest based in the field offices to conduct hearings at the local level. ALJs' primary responsibility in the field offices is handling administrative license revocation hearings for DPS involving individuals with suspended licenses due to allegedly driving while intoxicated. During fiscal 2013, these hearings accounted for 84 percent of SOAH's cases.

In fiscal 2013, SOAH spent about $9.1 million. The agency spends the majority of its funds conducting hearings for state agencies. The vast majority of SOAH's revenue comes from three sources almost equally: general revenue, the State Highway Fund for DPS driver's license revocation cases, and interagency contracts.

SOAH last underwent Sunset review in 2002-03. SOAH is subject to review, but not abolishment, every 12 years. Unless continued, the office's authority would expire September 1, 2015.

DIGEST:

CSHB 2154 would change the Sunset date of the State Office of Administrative Hearings (SOAH) from 2015 to 2027. It would require SOAH to be reviewed, but not abolished, in 2027 and every 12th year thereafter.

The bill would make several changes to SOAH, including:

- transferring scheduling responsibility on DPS cases to SOAH;
- adjusting interagency contract payment policies;
- removing the statutory separation of certain SOAH divisions;
- removing the comptroller's authority over and certain requirements for administrative law judges (ALJs) on tax cases;
- adding reporting requirements for referring agencies; and
- providing SOAH additional authority to remand defaulted cases for informal disposition.

Scheduling responsibility. The bill would require that DPS transfer to SOAH primary responsibility for scheduling hearings on administrative driver's license suspensions for a driver's failure to pass a test for intoxication. The bill would require DPS and the chief ALJ of SOAH to adopt and update at least biennially a memorandum of understanding establishing that SOAH had primary responsibility. The memorandum of understanding would, at minimum:

- set out the roles and responsibilities of DPS and SOAH in scheduling these hearings, including which agency was responsible for scheduling each stage of the hearing;
- ensure that both DPS and SOAH had timely access to scheduling and continuance information; and
- provide for the transfer of funding from DPS to SOAH for employees responsible for scheduling these hearings once SOAH assumed that responsibility.

A continuance request for a license suspension hearing would be sent in accordance with the terms set by the memorandum of understanding, instead of sent to DPS, as is required under current law. This section would take effect September 1, 2016, the same date by which the memorandum of understanding would have to be adopted.

Interagency contract payment policies. Under current law, SOAH can enter into contracts with other state agencies for SOAH's services. The contracts are based on whether the agency had referred matters to SOAH during the past three fiscal years and has complete information available related to the agency's hourly usage of SOAH's services.

The bill would allow the referring agencies that had this information available to pay SOAH for its services in either a lump-sum amount at the beginning of each fiscal year of the biennium, or a fixed amount at the start of each fiscal quarter of the biennium. SOAH would be required to report to the Legislative Budget Board any agency that failed to make a timely payment. If the agency contracted for a quarterly payment schedule, SOAH would be required to track the agency's actual hourly usage of SOAH's services during each fiscal quarter and forecast after each quarter the agency's anticipated hourly usage for the rest of the fiscal year.

The amount to be paid under the interagency contracts described above would be based on an hourly rate set by SOAH to sufficiently cover the office's full costs in providing services to the agency, including the cost to conduct hearings, salaries for ALJs, travel expenses, and administrative expenses. As under current law, the hourly rate would have to be set in time for it to be reviewed as part of SOAH's legislative appropriations request for the biennium. The amount to be paid under the interagency contracts also would be based on the anticipated hourly usage of SOAH's services by the referring agency for each fiscal year of the biennium. The bill would specify that SOAH would use this rate to charge the Railroad Commission for SOAH's services.

Any state agency that had contracted with SOAH to conduct hearings or alternative dispute resolution within the past three fiscal years would be required to submit information regarding the agency's anticipated hourly usage of SOAH's services for each fiscal year of the upcoming biennium. The information would be submitted to the Legislative Budget Board before the start of each biennium on a date chosen by SOAH.

Statutory separation of SOAH divisions. The bill would remove the statutory requirements that SOAH maintain separate tax, utility, and natural resource conservation divisions, and would repeal the tax division's separate Sunset date. It would make conforming changes to the language of the statute to reflect these changes. The bill also would update references to the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission.

Comptroller's authority and requirements on tax cases. The bill would remove the requirement that an ALJ who conducted tax hearings had devoted at least 75 percent of his or her legal practice to Texas state tax law in at least five of the past 10 years before the ALJ began working in the tax division. The bill would continue to allow SOAH to hear contested tax cases.

The bill would remove statutory provisions related to the comptroller's authority over SOAH's tax division. The office would no longer need to get prior approval before allowing an ALJ who primarily worked on tax cases to hear other kinds of cases. The comptroller would no longer have authority to evaluate SOAH's tax division or the ALJs within. Additionally, the comptroller would no longer be required to provide its priorities or policy needs to SOAH.

Reporting requirements. The bill would require any referring agency that received a proposal for decision in a case from SOAH to send an electronic copy of the agency's final decision or order in the matter to SOAH.

Authority to remand defaulted cases. The bill would allow an ALJ to dismiss a contested case in which a party defaulted and remand it to the referring agency for informal disposition. The referring agency could apply its own rules or the procedural rules of SOAH to informally dispose of the case. An ALJ could not remand a default contested case if the ALJ was authorized to render a final decision in that case.

Except as otherwise provided, the bill would take effect September 1, 2015, and would apply only to hearings conducted or contracts entered into on or after that date.

SUPPORTERS SAY:

CSHB 2154 would give the State Office of Administrative Hearings (SOAH) the authority to schedule its own docket, ensure stable funding, remove any appearance of inappropriate influence by the comptroller, and provide SOAH with more information to review and improve its performance.

Scheduling responsibility. Under current law, the Department of Public Safety (DPS) sets the initial hearings for administrative license revocations for SOAH. No other referring agency is allowed to schedule SOAH hearing dates unilaterally, and DPS's cases represent the vast majority of hearings that SOAH conducts. This system is inefficient and leads to delays in resetting hearing dates because it is dependent on communication between DPS and SOAH. The bill would move responsibility for scheduling these hearings to SOAH, giving it the control it needs to ensure that field offices are not overwhelmed and that these cases are processed in a timely manner.

While some argue that SOAH's responsibility for scheduling administrative license revocation hearings should be clear in statute, the memorandum of understanding between DPS and SOAH would be adequate to ensure SOAH's control over these cases. The memorandum also would give the agencies flexibility in working out their system for scheduling these cases. As the transition of responsibility occurs, there will be unforeseen issues that arise, and the agencies could work out solutions within the memorandum instead of being tied to statutory language that might not address the issues adequately.

Additionally, SOAH does not need primary control over continuance requests for these license revocation cases because scheduling changes more directly affect DPS, as it is DPS officers who are subpoenaed to appear at the hearings. DPS needs that information as soon as it is available to update its employees on hearings instead of relying on SOAH for the information. The number of continuance requests is very large — there were about 18,000 in fiscal 2013 — and DPS already is experienced in handling those requests, making it the better choice for this responsibility. The bill would require the memorandum of understanding to ensure that both SOAH and DPS had access to timely information of continuances, making it unnecessary for SOAH to take over these responsibilities.

Interagency contract payment policies. The bill would stabilize SOAH's funding by updating its billing processes with referring agencies. SOAH's current system largely is based on monthly invoices to referring agencies for SOAH's services, which are due a month later. This creates a

two-month delay for SOAH to receive payments, and agencies sometimes do not pay the invoices on time, making funding unpredictable for the office.

The bill would authorize agencies to pay SOAH either in one lump-sum payment at the beginning of the fiscal year, or quarterly, based on projections for the amount they would most likely owe SOAH for services that year. SOAH also would be required to report to the Legislative Budget Board any agency that did not make timely payments under its contract. This would stabilize SOAH's funding and ensure that the agency could cover its expenses, such as payroll, and not have to worry about agencies paying late.

This bill would not be the appropriate avenue to address concerns about the office's budget sources, such as whether SOAH should receive more general revenue instead of relying on interagency contracts. That issue would be better decided when SOAH's funding was next appropriated.

Statutory separation of SOAH divisions. The bill would give SOAH more flexibility and information to better manage itself to efficiently dispose of cases. Up to now, SOAH has been required to maintain separate divisions for tax, utility, and natural resource conservation cases because the office did not have the expertise needed to handle those cases effectively when the office was originally formed. SOAH has since obtained this expertise, making the requirement for three separate divisions unnecessary. The bill would give SOAH the ability to reorganize and shift resources to deal with changing workload demands.

Additionally, the separate Sunset date for the tax division would be removed because it no longer would be necessary. SOAH handles tax cases effectively, and its performance in handling those cases should be reviewed along with the rest of the agency's performance.

Comptroller's authority and requirements on tax cases. The bill would remove the appearance of undue influence over SOAH by the comptroller. When SOAH took over hearing tax cases involving the comptroller's office, certain statutory provisions were introduced that gave the comptroller some oversight over SOAH's tax division, such as the ability

to evaluate ALJs who heard tax cases. These provisions rarely are used, but their existence could give the appearance to taxpayers involved in these cases of inappropriate influence by the comptroller. In order to extinguish doubts about SOAH's impartiality, the bill would remove these provisions and the comptroller's ability to exercise power over SOAH's tax cases.

Reporting requirements. The bill would require referring agencies to send copies to SOAH of their final orders on cases referred to the office so that SOAH could have a better understanding of how many times agencies overturned its decisions and also have clear records about when a case was closed. This information would help SOAH review and evaluate its performance and identify trends or areas for improvement.

Authority to remand defaulted cases. The bill would authorize referring agencies to informally dispose of default contested cases remanded from SOAH. Currently, some agencies do not have clear statutory authority to informally dispose of these cases when SOAH remands them back to the agency. This is inefficient because it requires an ALJ to issue a formal proposal for decision when the case cannot be informally disposed of by the referring agency. Time and resources could be saved if the ALJ were able to return the case to the referring agency. The bill would clarify that agencies that do not have clear statutory authority to informally dispose of these cases could use SOAH's procedural rules for disposition.

OPPONENTS SAY:

CSHB 2154 would not fix the inefficient system used by DPS for scheduling administrative license revocation hearings and continuance requests. SOAH's responsibility for those duties should be clearly laid out in statute, not dependent on a memorandum of understanding between DPS and SOAH. These hearings represented 84 percent of SOAH's cases in fiscal 2013 and are the only cases over which SOAH does not have primary scheduling power. SOAH should be provided authority in statute to control hearing schedules because it is SOAH's employees that are affected by those schedules.

Under current law, DPS sets initial five-day continuances available to drivers for these hearings. This system is problematic because it relies on DPS and SOAH communicating with one another, which sometimes does

not happen. When continuation requests are not communicated to SOAH, the hearings proceed, but no parties attend. That is a waste of SOAH's time and resources. SOAH should be responsible for continuance requests because they greatly affect SOAH's employees and schedules.

The bill would continue to use the inefficient interagency contract system to provide one-third of SOAH's funding. SOAH instead should be funded through general revenue because it would simplify the process and stabilize SOAH's funding. Instead of agencies receiving funds through appropriations to pay for SOAH's services and then sending that money to SOAH, the intermediate step should be removed and SOAH's funds should be appropriated directly to the agency. This would remove the concern about agencies making late payments and SOAH being unable to cover expenses such as payroll.

NOTES: The companion bill, SB 216 by Birdwell, was referred to the Senate Committee on State Affairs on March 10.

SUBJECT: Decreasing the state sales tax rate

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — D. Bonnen, Bohac, Button, Darby, Martinez Fischer, Murphy, Springer, C. Turner, Wray

0 nays

2 absent — Y. Davis, Parker

WITNESSES: For — James LeBas, Texas Association of Manufacturers, AECT, TxOGA, and Texas Chemical Council; Talmadge Heflin, Texas Public Policy Foundation; Ronnie Volkening, Texas Retailers Association; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: Adrian Acevedo, Anadarko Petroleum Corp.; Jon Fisher, Associated Builders and Contractors of Texas; Dan Hinkle, British Petroleum, EOG Resources; Greg Macksood, Chesapeake Energy; Richard Lawson, Chevron; Michael Weaver, Church Group; Warren Mayberry, DuPont; Marty Allday, Enbridge Energy; Samantha Omey, ExxonMobil; Angela Smith, Fredericksburg Tea Party; Mindy Ellmer, Lyondell Basell Industries; Lindsay Sander, Markwest Energy; Will Newton, NFIB/Texas; Julie Moore, Occidental Petroleum; Ed Longanecker, Texas Independent Producers and Royalty Owners Association; Cade Campbell, SM Energy Co.; Sarah Matz, TechAmerica; Bill Stevens, Texas Alliance of Energy Producers; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Scott Norman, Texas Association of Builders; Bill Hammond and Stephen Minick, Texas Association of Business; Daniel Gonzalez, Texas Association of Realtors; Hector Rivero, Texas Chemical Council; Matt Burgin, Texas Food and Fuel Association; Justin Bragiel, Texas Hotel and Lodging Association; Todd Staples, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Kenneth Besserman, Texas Restaurant Association; John W. Fainter Jr., the Association of Electric Companies of Texas, Inc.; Daniel Womack, the Dow Chemical Company; Matt Long; Sandy Ward)

Against — Cheasty Anderson and Patrick Bresette, Children’s Defense

Fund-Texas; (*Registered, but did not testify*: Renee Lopez, Bob Kafka, and Albert Metz, Adapt of Texas; Dick Lavine, Center for Public Policy Priorities; Dennis Borel, Coalition of Texans with Disabilities; Will Francis, National Association of Social Workers-Texas Chapter; Cathy Cranston, Personal Attendant Coalition of Texas; Eileen Garcia, Texans Care for Children; John Patrick, Texas AFL-CIO; Dwight Harris, Texas American Federation of Teachers; Harrison Hiner, Texas State Employees Union; Maxie Gallardo, Workers Defense Project; Freddy Gonzalez; Jennifer McPhail; Ronnie Montgomery; Shirley Montgomery)

On — Kevin Kavanaugh, Legislative Budget Board; (*Registered, but did not testify*: Ursula Parks, Legislative Budget Board; Tom Currah, Texas Comptroller of Public Accounts)

DIGEST:

CSHB 31 would decrease the state sales tax rate from 6.25 percent to 5.95 percent.

This bill would take effect October 1, 2015, and would not affect tax liability accruing before that date.

SUPPORTERS SAY:

CSHB 31 would produce economic effects that could ripple through the business climate by reducing the state sales tax, generating billions of dollars in economic activity and stimulating the creation of thousands of jobs. This bill would reduce the tax burden on every household in the state.

Demand-side impact. CSHB 31 would result in a broad reduction in the effective tax burden borne by Texans. In so doing, it could stimulate consumption, which drives job growth. Job growth, in turn, stimulates more consumption. The consumer, not the government, is the most economically efficient agent. Reducing the sales tax would put more money in consumers' pockets, allowing more money to be used more efficiently in the economy.

Everyone in the state pays the sales tax at some point during the year, so cutting the sales tax would be broader and more visible than any other type of tax cut.

Supply-side impact. Cutting the sales tax could create thousands of new jobs and make a good business climate even better. The Legislative Budget Board's (LBB's) tax/fee equity note indicates that businesses would benefit from the bill. That benefit would be turned directly into economic activity and jobs. The LBB estimates that this bill, in conjunction with HB 32 by D. Bonnen, which is also on today's calendar, could create 72,300 new jobs by 2020 and grow economic output by $21.7 billion.

The bill could significantly improve the business climate and attract new investment to the state. Texas currently has the 12th-highest sales tax in the nation. The tax rate following the passage of this bill could be the 24th-lowest, making it more likely that businesses would relocate to the state.

Sales taxes disproportionately burden small businesses, which could grow to be the major employers of tomorrow. Texas should help small businesses succeed and provide a business-friendly climate in which they can thrive by lowering the sales tax and spurring consumer spending.

Tax cut alternatives. A sales tax cut would be better for the Texas economy than an increase in the homestead exemption. Studies consistently show that sales taxes have a greater negative effect on economic activity than property taxes. The LBB estimates that over five years, a sales tax cut could create 42,350 more jobs and spark $5.2 billion more in GDP growth than an equivalent increase in the homestead exemption.

The sales tax is a state tax, meaning that any tax cuts could not be offset by either locally controlled tax rates increasing or appraisal values rising, as is the case with property tax cuts. Cutting the sales tax would be the best way to secure permanent tax relief for Texans.

Although cutting or eliminating the franchise tax is an important goal, a sales tax cut could do more for the economy than a decrease in the franchise tax. According an analysis by the LBB, a $3 billion cut in the sales tax could create 14,800 more jobs than an equivalent cut in the franchise tax.

Spending alternatives. Current versions of the state budget include increases to funding in many areas of vital state services. It is likely that both public education and transportation will receive additional funding. The state already is set to invest more, and the revenue lost under this bill would not be needed.

This bill could decrease the footprint of the government and allow Texans to make decisions about how they want to spend the money saved in sales tax that are best for themselves and the economy. There always will be another government program to fund, and we should adopt tax policies that allow us to focus on the programs and services that provide the greatest return on investment.

Revenue stability. Even with the sales tax cut, the state would have sufficient revenue to meet its obligations in future biennia. The budget surplus in this biennium is likely to continue. Although oil prices and severance tax revenue are low, oil probably will not stay at its current price. If it does, the state is estimated to have about $11 billion in the rainy day fund at the beginning of the next biennium. The state still would have a safety net to rely on in the event of an unexpected decrease in tax revenue.

The state should strive to keep tax collections low in comparison to economic growth. The Texas Conservative Coalition Research Institute estimates that while revenue increased by 6.7 percent in 2014, the state saw only 3.7 percent economic growth. If this trend continues, the government's footprint will expand, decreasing economic efficiency. Reducing the sales tax rate would be a step toward aligning revenue with the state's economic growth.

OPPONENTS SAY:

CSHB 31 would provide an insignificant benefit to the average Texan and could forgo better investments that might be made with the lost tax revenue. It also could pose a threat to fiscal stability in future biennia.

Demand-side impacts. The overall impact to an average household may not be significant, and many may not notice. The average Texan might see only $3.37 per month in tax relief.

Supply-side impacts. Because the state does not have a personal income tax, which usually is considered to be the most economically harmful, Texas has a significant advantage over many other states when it comes to attracting businesses. Decreasing the sales tax rate would do little to improve an already excellent business climate.

Although these aggregate gains seem impressive, they could ultimately be shortsighted. Not funding critical infrastructure, such as schools and transportation, could cost more in long run. Texas could become less competitive and costs could begin to add up.

Spending alternatives. The bill could cost the state more than $2.6 billion in tax revenue during the 2016-17 biennium. This money can and should be spent elsewhere. The state has an obligation to adequately fund basic services that help protect Texas' future.

There are many ways to invest tax revenue that would save the state billions in future biennia. Studies show that every dollar spent on pre-kindergarten education saves the state anywhere from $3.50 to $7. This is because pre-kindergarten education decreases the likelihood of reliance on special education and social services in later years. Investments in this area also lead to increased high school graduation rates, leaving the state's economy more competitive and its workforce more educated. Funding for public education in general is still not back to pre-2011 levels, when the state cut a significant amount from school budgets. The state needs to fund this obligation before considering a tax cut.

Investing in transportation also would pay more dividends in the long run than a tax cut. The Texas A&M Transportation Institute found that delays and fuel costs as a result of congestion cost the state $10.1 billion and more than 472 million hours of travel time. TRIP, a national transportation research group, found that an inadequate transportation system costs Texas more than $23 billion per year, which includes costs from congestion, air pollution, and public safety. In other words, billions of dollars are lost every year because Texas does not properly fund its transportation infrastructure.

Revenue Stability. This tax cut may not be sustainable. Severance tax revenue from oil and gas sales has increased significantly because of the shale oil boom. However, these severance taxes, as well as the state's revenue estimates, are heavily reliant on the price of oil rising. There is no guarantee of this happening, and numerous unpredictable geopolitical factors could affect the price of oil.

Some of the current surplus was left over from last session. The state has no guarantee of such a luxury in the 2018-19 biennium. Making tax cuts from a one-time influx of money would not be the most responsible approach because revenue is variable and tax cuts are permanent. The political climate of the state would not allow a tax hike, and this could leave the state in a difficult fiscal situation in future biennia, which might have to be solved by cutting vital state services.

OTHER OPPONENTS SAY:

Tax cut alternatives. The state has a variety of other opportunities to cut taxes and return money to the taxpayer. The state should consider increasing the homestead exemption instead because cutting property taxes would have a variety of positive economic benefits.

The state also should consider reducing or possibly eliminating the franchise tax. Cutting the sales tax would not have as big an effect because there is an additional degree of separation between consumption and job creation. A franchise tax cut would directly impact job growth and have a greater economic impact in the long run.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 31 would have a negative net impact of $2.66 billion to general revenue through fiscal 2016-17. The tax/fee equity note states that the bill would reduce the effective tax rate on all households by 0.12 percent and reduce the taxes on all households by 1.38 percent

SUBJECT: Reducing franchise tax rate and expanding E-Z computation eligibility

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Springer, Wray

2 nays — Martinez Fischer, C. Turner

2 absent — Y. Davis, Parker

WITNESSES: For — Peggy Venable, Americans for Prosperity-Texas; Will Newton, NFIB/Texas; James LeBas, Texas Apartment Association; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Stephen Minick, Texas Association of Business; Todd Staples, Texas Oil and Gas Association; Vance Ginn, Texas Public Policy Foundation; Ronnie Volkening, Texas Retailers Association; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: Adrian Acevedo, Anadarko Petroleum Corp.; Jon Fisher, Associated Builders and Contractors of Texas; Dan Hinkle, British Petroleum, EOG Resources; Greg Macksood, Chesapeake Energy; Richard Lawson, Chevron; Warren Mayberry, DuPont; Marty Allday, Enbridge Energy; Samantha Omey, ExxonMobil; Angela Smith, Fredericksburg Tea Party; Mindy Ellmer, LyondellBasell Industries; Lindsay Sander, Markwest Energy; Julie Moore, Occidental Petroleum; Ed Longanecker, President, Texas Independent Producers and Royalty Owners Association; Cade Campbell, SM Energy Co.; Sarah Matz, TechAmerica; Bill Stevens, Texas Alliance of Energy Producers; James LeBas, Texas Association of Manufacturers, AECT, Texas Oil and Gas Association, and Texas Chemical Council; Scott Norman, Texas Association of Builders; Bill Hammond, Texas Association of Business; Hector Rivero, Texas Chemical Council; Matt Burgin, Texas Food and Fuel Association; Justin Bragiel, Texas Hotel and Lodging Association; Troy Alexander, Texas Medical Association; Thure Cannon, Texas Pipeline Association; Kenneth Besserman, Texas Restaurant Association; Les Findeisen, Texas Trucking Association; John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; Matt Long; Sandy Ward)

Against — Dick Lavine, Center for Public Policy Priorities; Dennis Borel, Coalition of Texans with Disabilities; Celina Moreno, MALDEF; (*Registered, but did not testify*: Renee Lopez, Bob Kafka, and Albert Metz, Adapt of Texas; Cheasty Anderson and Patrick Bresette, Children's Defense Fund-Texas; Will Francis, National Association of Social Workers-Texas; Cathy Cranston, Personal Attendant Coalition of Texas; Eileen Garcia, Texans Care for Children; John Patrick, Texas AFL-CIO; Dwight Harris, Texas American Federation of Teachers; Harrison Hiner, Texas State Employees Union; Maxie Gallardo, Workers Defense Project; Freddy Gonzalez; Jennifer McPhail)

On — Kevin Kavanaugh, Legislative Budget Board; C. LeRoy Cavazos, San Antonio Hispanic Chamber of Commerce; (*Registered, but did not testify*: Ursula Parks, Legislative Budget Board; Tom Currah and Jennifer Specchio, Comptroller of Public Accounts)

BACKGROUND: The Texas franchise tax, or "margins" tax, applies to each taxable entity that does business or is organized in the state. Under Tax Code, sec. 171.002, the tax is calculated as either 1 percent or 0.5 percent of taxable margin, with the lower rate applying to taxable entities primarily engaged in retail or wholesale trade.

Tax Code, sec. 171.1016 provides for an "E-Z computation and rate." A taxable entity with total revenue of $10 million or less may choose to pay the franchise tax using this comparatively less complex calculation. The tax due is the taxable entity's apportioned total revenue, as defined by sec. 171.106, multiplied by the E-Z tax rate, which is 0.575 percent.

According to the comptroller, the franchise tax comprised 4.5 percent of state revenues, or $4.73 billion, in fiscal 2014.

DIGEST: CSHB 32 would decrease the franchise tax rate from 1 percent to 0.75 percent. The bill also would decrease the franchise tax on retailers or wholesalers from 0.5 percent to 0.375 percent.

A taxable entity with no more than $20 million in total revenue, up from $10 million in current law, could choose to pay the franchise tax under E-Z computation and rate provisions. The bill would decrease the tax rate

under this computation from 0.575 percent to 0.331 percent.

The bill would take effect January 1, 2016, and would apply only to a franchise tax report originally due on or after that date.

SUPPORTERS SAY:

CSHB 32 would be a boon for economic development and investment in the state. It would reduce compliance costs and business overhead while sending a message that Texas's business climate is the best in the nation.

Aggregate economic impact. Because this tax cut would directly reduce the burden on businesses, the bill would have a direct and immediate effect on job creation. The bill would provide nearly $1.3 billion in relief to Texas businesses in fiscal 2016, freeing up that money for use in creating jobs and investment. CSHB 32 would go a quarter of the way to eliminating the franchise tax, which by some estimates could result in as much as $3.4 billion in annual investment and up to 129,000 new jobs within five years.

Compliance costs. Businesses are negatively affected not just by the cost of the tax itself but the compliance costs associated with computing the tax due. This bill would make nearly 14,000 more businesses eligible to use the E-Z computation, reducing compliance costs and allowing those businesses to cut their overhead.

According to the Tax Foundation, Texas is 39th in the nation in corporate tax complexity and burden largely because of the franchise tax's complexity. The Tax Foundation also notes that if the franchise tax were repealed, Texas would rank as the best in the nation. This bill could make Texas' business climate better and reduce overhead for businesses newly eligible for the E-Z computation.

Tax cut alternatives. This bill would do more for the Texas economy than increasing the homestead exemption. Analysis from the Legislative Budget Board shows that a $2.56 billion franchise tax reduction returns 7,730 more jobs and $10.35 billion more GDP growth than an equivalent increase in the homestead exemption.

This bill would accomplish the goal of a low and broad tax; exempting

businesses would not. If the franchise tax is made as broad as possible, it can be made as low as possible, minimizing the impact on business in the state. Exempting businesses under a certain size would go against this philosophy and merely increase the already-disproportionate tax burden on larger, capital-intensive businesses. About 900,000 businesses already are exempt, and the state should not enact policies that leave a small percentage of businesses carrying 100 percent of the burden.

Spending alternatives. Current versions of the state budget include increases to funding in many areas of vital state services. It is likely that both public education and transportation will receive additional funding. The state already is set to invest more, and the revenue lost under this bill would not be needed.

This bill would decrease the footprint of the government and empower Texans to make decisions with the forgone tax revenue that are best for the economy. By contrast, there will always be another government program to fund, regardless of its effectiveness. Texas should adopt tax policies that allow the state to focus on those government programs that have the greatest return on investment.

Revenue stability. The state would have plenty of revenue to meet its obligations in future biennia. The budget surplus in this biennium likely is not unique. Although oil prices (and severance tax revenue) are low, oil likely will not stay at its current prices. Even if it does, the state will have about $11 billion in the rainy day fund at the beginning of the next biennium. Even if there is an unexpected decrease in tax revenue, the state will have substantial savings to draw upon.

Additionally, the Texas Conservative Coalition Research Institute estimates that while revenue increased by 6.7 percent in fiscal 2014, the state saw only 3.7 percent economic growth. The state has room for fiscal adjustments.

OPPONENTS SAY:

Aggregate economic impact. This bill ultimately could have an insignificant effect on businesses. The impact to the average Texan could be minimal; the Legislative Budget Board's tax/fee equity note indicates that the average tax rate would be reduced by only 0.09 percent, which is

not worth a multibillion-dollar investment.

By some estimates, a significant portion of the benefits from this tax cut would go to out-of-state consumers and businesses. The Legislature should craft its tax plan so that Texas businesses and consumers see maximum benefit.

Although the estimated aggregate gains as a result of this bill might seem impressive, they could be shortsighted. Not funding critical infrastructure like schools and transportation will cost far more in long run when Texas becomes increasingly less competitive and costs begin to add up.

Compliance costs. As the state does not have a personal income tax (a tax that many consider the most economically harmful), Texas has a significant advantage over many other states when it comes to attracting businesses. Decreasing the franchise tax rate would do little to improve an already excellent business climate.

Spending alternatives. This bill would cost the state $2.56 billion in revenue during the 2016-17 biennium. This money can and should be spent elsewhere. The state has an obligation to fund basic services that protect its future.

There are any number of potential ways to invest tax revenue which would save the state billions in future biennia. Studies show that every dollar spent on prekindergarten education saves the state between $3.50 and $7. This is because prekindergarten education significantly decreases the likelihood of reliance on special education and social services in later years. Investments in this area have demonstrably increased high school graduation rates, leaving the state's economy more competitive and its workforce more educated. Funding for public education in general is still not back to pre-2011 levels, when the state cut a significant amount from school budgets. The state needs to fully fund this obligation before considering a tax cut.

Investing in transportation also would pay far more dividends in the long run than a tax cut. The Texas A&M Transportation Institute found that delays and fuel costs as a result of congestion cost the state $10.1 billion

and more than 472 million hours of travel time. TRIP, a national transportation research group, found that an inadequate transportation system costs Texas more than $23 billion, which includes costs from congestion, air pollution, and public safety. In other words, billions of dollars are lost every year because Texas does not properly fund its transportation infrastructure.

Revenue stability. This tax cut may not be sustainable. There has been an illusion of plenty caused by the shale oil boom, with severance tax revenue from oil and gas sales up significantly. However, these severance taxes (and the state's revenue estimates) are heavily reliant on the price of oil going back up. There is no guarantee this will happen, and any number of geopolitical factors beyond the capacity of the state to predict could prevent an increase in the price of oil.

In addition, some of the current surplus was left over from last session, and the state has no guarantee of such a luxury in the 2018-19 biennium. Making tax cuts from a one-time influx of money would not be the most responsible approach, as revenue is variable and tax cuts are permanent. The political climate of the state would not allow a tax hike, which could leave the state in a difficult fiscal situation in future biennia that might have to be solved by cutting vital state services. This is a particularly salient issue for the franchise tax because it indirectly funds the Foundation School Fund.

OTHER OPPONENTS SAY:

Tax cut alternatives. Instead of reducing the franchise tax rate as much, the state would gain more by exempting businesses with lower revenues and tax burdens from the tax entirely. A large portion of the economic harm caused by the tax is due to compliance costs and bookkeeping. This bill would not ensure that the compliance costs do not outweigh the benefits that the state can provide with the added revenue.

NOTES:

The Legislative Budget Board's fiscal note estimates that the bill would have a negative impact of $2.56 billion to the property tax relief fund through the 2016-17 biennium. The tax/fee equity note indicates that the bill would reduce the effective tax rate for all households by 0.09 percent for taxes effective in fiscal 2017.

SUBJECT: Telling arrestees of immigration consequences of guilty, no contest pleas

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — George Dix; Dahlia M. Gutierrez; John Vasquez; (*Registered, but did not testify*: Charles Reed, Dallas County; Gloria Leal, Mexican American Bar Association of Texas; David Gonzalez, Texas Criminal Defense Lawyers Association; Sarah Pahl, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP; Jennifer Allmon, Texas Catholic Conference of Bishops)

Against — None

On — Wesley Shackelford, Texas Indigent Defense Commission; David Slayton, Texas Office of Court Administration, Texas Judicial Council; (*Registered, but did not testify*: Deanna L. Kuykendall, Texas Municipal Courts Association)

BACKGROUND: Code of Criminal Procedure, art. 15.17(a) provides a list of items about which a magistrate must inform an arrested person within 48 hours of an arrest, including the accusation against the person, the person's right to legal counsel, and the right to remain silent.

Code of Criminal Procedure, art. 26.13(a)(4) requires that before accepting a plea of guilty or no contest in a felony case, the court must inform defendants that if they are not citizens of the United States, a plea of guilty or no contest may result in deportation, exclusion from admission to the United States, or the denial of naturalization under federal law.

DIGEST: HB 559 would expand the items about which a magistrate must tell arrestees within 48 hours of an arrest to include informing the arrestee that if he or she was not a citizen of the United States, entering a plea of guilty

or nolo contendere could affect the person's immigration or residency status and could result in deportation, exclusion from admission to the United States, or denial of naturalization under federal law.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 559 is needed to maintain the fairness and integrity of the state's justice system by ensuring that all of those arrested are aware of the possible immigration consequences of guilty or no contest pleas. The issue came to light with the U.S. Supreme Court decision in *Padilla v. Kentucky* in 2010, which emphasized the importance of criminal defendants understanding the seriousness of the potential immigration consequences of convictions and pleas in their cases.

In criminal cases involving non-citizen defendants, deportation or other consequences can occur after guilty or no contest pleas, including for relatively minor charges. While current law requires that defendants being arraigned for felony offenses be informed of possible immigration consequences of guilty or no contest pleas, there is no such requirement for those arrested for misdemeanor offenses, many of which proceed without the defendant having a lawyer. Some courts in Texas have created their own instructions and are providing this information to those accused of misdemeanors, but others are not. Because the immigration consequences can be the same whether the offense was a felony or misdemeanor, the state should ensure all defendants receive the information soon after being arrested.

The bill would address this problem and comply with the spirit of the *Padilla v. Kentucky* decision by requiring magistrates to give clear and uniform instructions to every defendant about possible immigration law consequences of their pleas. While there is not a constitutional requirement for a magistrate to instruct an arrestee of these consequences, it is important that all defendants are consistently informed of and understand this information and their rights. Under American Bar Association guidelines, judges are ethically bound to advise defendants that they may face immigration consequences if they plead guilty or no contest.

In *Padilla v. Kentucky,* the U.S. Supreme Court emphasized the obligation of counsel to notify non-citizen defendants of possible immigration consequences. However, relying on defense lawyers to provide the instruction would not work in the many misdemeanor cases in which defendants go before a magistrate and enter a plea without first meeting with a lawyer. In other cases in which an arrestee may have a lawyer, instructions could be given out inconsistently. In these cases, the bill would remind defense counsel of their obligations to inform defendants of possible immigration consequences. Giving this instruction at the beginning of the arrest process to all defendants would avoid inconsistencies in its application.

The bill would require a best practice, already used in about half the states, that would not impose a cost on the state or courts or be a burden on magistrates. To implement the bill, a sentence simply would have to be added to the current instructions.

Instead of possibly leading to convictions being challenged or overturned, the bill would work to prevent such occurrences. A blanket requirement for all defendants to receive the warning from a magistrate would add a layer of protection from cases being overturned on appeals based on someone not receiving the information.

OPPONENTS SAY:

The state does not have a constitutional requirement for a magistrate to inform arrestees of the consequences of a guilty or no contest plea on immigration status. Because it is not a constitutional requirement, the information should not be included among other admonishments in Code of Criminal Procedure, art. 15.17, which include the right to counsel and the right to be silent. HB 559 would elevate the immigration-related admonishment when there are other consequences in law that might deserve equal treatment.

Under HB 559, a failure to make a proper warning might be used to challenge a conviction and could result in overturned convictions. Notifying defendants of possible immigration consequences should remain the obligation of legal counsel, not magistrates. Before courts accept guilty or no contest pleas for felonies, judges must give individuals information about the possible immigration consequences of such a plea,

and this is the proper time to give out the information.

NOTES: The Senate companion bill, SB 268 by Watson, was approved by the Senate on April 20.

SUBJECT: Creating an affirmative defense in enforcement of child support actions

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Riddle, Hughes, Peña, Rose, J. White

0 nays

1 absent — Sanford

WITNESSES: For — Karl Hays, Texas Family Law Foundation; (*Registered, but did not testify*: Ingrid Montgomery, Intended Parents' Rights; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP)

Against — None

On — Joel Rogers, Office of the Attorney General-Child Support Division; (*Registered, but did not testify*: Charles Smith, Office of the Attorney General-Child Support Division)

DIGEST: CSHB 364 would bar a court from finding an individual in contempt of court for failure to pay child support if the individual had accrued the unpaid child support while incarcerated.

The bill would require the obligor or his or her attorney to present sufficient evidence during the enforcement hearing showing that the individual had been incarcerated for at least 90 consecutive days for reasons other than failure to pay child support or violence against the family owed support. The evidence presented also would have to show that the obligor did not have sufficient resources available to pay the ordered child support during the individual’s incarceration.

The bill would take effect September 1, 2015, and would apply only to hearings for suits affecting the parent-child relationship that commenced on or after that date.

SUPPORTERS SAY:

CSHB 364 would help resolve an unfair burden on individuals who accrue child support arrears while incarcerated. Currently, incarcerated child support obligors may file for a modification in payments due to an inability to make them, but many individuals are not aware of this and do not take advantage of it, resulting in large child support arrears. These individuals may then be found in contempt of court for these arrears after they are released from confinement, which can lead to re-incarceration. The bill would allow individuals to defend against these actions by showing that they were unable to make payments while incarcerated.

The bill would allow parents and other obligors to reintegrate into society, find employment, and resume child support obligations. Many people who leave prison owing child support arrears rarely pay what is owed, and their criminal record makes finding employment — particularly with a salary sufficient to cover the arrears — difficult or impossible. As a result, those owing large amounts of child support upon release may disappear, which hurts children and custodial family members and reduces the chance of the family ever receiving child support from that person. People reentering society after incarceration face many barriers, and this bill would remove one while balancing the needs of the child support obligor with those of the obligees.

CSHB 364 also would require individuals asserting this defense to show that they were not incarcerated for harming the child or family to whom support was owed or for failing previously to pay child support. This would ensure that the bill did not benefit people who had harmed their families. The bill also would require proof that the obligor was unable to make payments while confined, as some individuals might have assets or other sources of income that would enable them to pay even while incarcerated.

OPPONENTS SAY:

CSHB 364 should apply regardless of the reasons an obligor was incarcerated, as was the case with the bill as introduced. Many people who go to jail because of failure to pay child support are not willfully avoiding child support payments but simply are unable to make them. Holding them in contempt for arrears when they leave prison would only exacerbate this situation. Even if a person were incarcerated for harming the family owed support, holding the obligor in contempt for support

payments they may never be able to pay upon release would be a disincentive to making any payments at all, further harming the family.

SUBJECT: Liability of employers reimbursing TWC for unemployment benefits

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 9 ayes — Button, Johnson, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Villalba, Vo

0 nays

WITNESSES: For — Ed Berger, Bexar Medina Atascosa WCID No1; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Annie Spilman, National Federation of Independent Business - Texas)

Against — None

On — Steve Riley, Texas Workforce Commission

BACKGROUND: Under the Texas Unemployment Compensation Act (Labor Code, ch. 201-215), workers who are terminated may be eligible to receive unemployment benefits from the unemployment compensation fund. Conditions that may make a worker ineligible for benefits include that the worker was discharged for misconduct connected with the individual's last work, as described by sec. 207.044, or that the worker left the last work voluntarily without good cause connected with the individual's work, as described by sec. 207.045.

Employers pay contributions to the Texas Workforce Commission (TWC) for unemployment benefits either through taxes or reimbursements. Under Labor Code, sec. 204.062, certain employers pay a replenishment tax into the unemployment compensation fund. This tax replenishes the unemployment compensation fund for some benefits paid to eligible workers that were not charged to any specific employer. Because no one employer can be held liable for these benefits, the cost is spread among a group of employers.

Labor Code, secs. 205.001 and 205.002 permit political subdivisions,

Indian tribes, and nonprofit organizations to pay reimbursements for benefits instead of unemployment tax contributions, including the replenishment tax. Sec. 205.013 stipulates that these reimbursing employers pay into the unemployment compensation fund for any unemployment benefits that have been paid to a worker.

According to TWC, reimbursing employers are liable for benefits paid in error. The reimbursing employer cannot be credited until the commission receives money back from the claimant.

DIGEST:

HB 3373 would amend Labor Code, ch. 205 to stipulate that a reimbursing employer would not be liable to pay a reimbursement to the unemployment compensation fund for unemployment benefits paid to workers if their separation from work resulted from the individual:

- being discharged for misconduct; or
- voluntarily leaving work without good cause connected with the individual's work.

The bill also would allow reimbursing employers to contest reimbursements billed to the employer by the Texas Workforce Commission that violated the provisions of the bill. The employer would use dispute resolution procedures under the Texas Unemployment Compensation Act.

HB 3373 would take effect September 1, 2015, and would apply only to a claim for unemployment compensation benefits filed on or after that date.

SUPPORTERS SAY:

HB 3373 would close a loophole in the Labor Code to help ensure that employers who choose to reimburse the Texas Workforce Commission for benefits paid from the unemployment compensation fund, rather than contribute taxes to the fund, were not liable for faulty claims. The bill would clarify that a reimbursing employer was not liable for certain individuals' benefits and would explicitly authorize a reimbursing employer to contest reimbursements that violated the bill's provisions. Occasionally, a worker who is ineligible for unemployment benefits receives them anyway. Reimbursing employers currently are liable to pay, dollar for dollar, unemployment benefits that were paid to workers who

were not eligible for the benefits. By requiring reimbursing employers to pay on faulty claims, current law effectively is penalizing them for choosing not to pay a replenishment tax. The bill would reduce reimbursing employers' liability to pay benefits to certain individuals and would provide reimbursing employers with an avenue for disputing these faulty claims.

OPPONENTS SAY:

HB 3373 unfairly would transfer the risk of no-fault claims from reimbursing businesses onto businesses that pay replenishment taxes. The Texas Unemployment Compensation Act does not require any organization to identify as a reimbursing employer; the choice is up to eligible organizations. When an organization chooses to be a reimbursing employer, it is choosing not to pay the replenishment tax. It would be unfair to benefit reimbursing employers by transferring the burden to pay faulty claims to organizations contributing taxes to the unemployment compensation fund.

By reducing the liability of reimbursing employers, HB 3373 could shift an estimated $58.4 million of tax liability from reimbursing employers to employers who pay the replenishment tax, according to the Legislative Budget Board's fiscal note.

NOTES:

According to the Legislative Budget Board's fiscal note, HB 3373 would have an estimated negative net fiscal impact of about $3 million to general revenue through fiscal 2016-17, which would result from personnel and technology needs for the Texas Workforce Commission (TWC). TWC estimates that about $58.4 million of tax liability would shift from reimbursing employers to contributing private employers.

SUBJECT: Allocating a portion of the hotel occupancy tax to certain municipalities

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Justin Bragiel, Texas Hotel and Lodging Association)

Against — None

On — (*Registered, but did not testify*: Donald Dillard and Brad Reynolds, Texas Comptroller of Public Accounts)

BACKGROUND: Tax Code, ch. 156 imposes a 6 percent tax on hotel rooms that cost more than $15.

Sec. 156.2512 provides that eligible barrier island coastal municipalities receive an allocation of either a sixth or a third of the tax revenue from hotel occupancy taxes collected in that municipality for the purposes of cleaning and maintaining public beaches or funding an erosion response project. "Eligible barrier island costal municipality" is defined as a municipality that borders the Gulf of Mexico, is located wholly or partly on a barrier island, and:

- includes a portion of a national seashore;
- includes a national estuarine research reserve; or
- is located within 30 miles of Mexico.

The Legislature has granted eligible barrier island coastal municipality status to a number of seaside communities including Galveston, South Padre Island, and Port Aransas. These municipalities use their portion of state hotel occupancy tax revenue for beach safety and maintenance projects that attract tourists and generate economic benefit. Other, smaller

communities along the Gulf also conduct similar projects without receiving hotel tax revenue.

DIGEST:

HB 3052 would classify a municipality that had a population of less than 10,000 and was located in a county with a population of at least 300,000 that was adjacent to a county with a population of at least 3,000,000 as an "eligible barrier island coastal municipality." A municipality included in this classification (Quintana and Village of Surfside Beach) would receive one-sixth of the revenue from the hotel occupancy tax collected within the municipality to fund beach clean-up and erosion response projects.

This bill would take effect September 1, 2015.

NOTES:

The Legislative Budget Board's fiscal note estimates that the bill would have a negative impact to general revenue of $157,000 in reduced hotel tax receipts through fiscal 2016-17.

SUBJECT: Changing the standard for approving names of certain businesses

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — Oliveira, Simmons, Fletcher, Romero, Villalba

2 nays — Collier, Rinaldi

WITNESSES: For — Krista Ali, Capitol Services, Inc.; Lori Ann Fox; (*Registered, but did not testify*: Yvette Cleveland, Capitol Services, Inc.)

Against — None

On — Mike Powell and Briana Godbey, Secretary of State

BACKGROUND: Business Organizations Code, ch. 5 governs the names of entities. Sec. 5.053 prohibits a filing entity or foreign filing entity from having a name that is the same as, or in the secretary of state's judgment, is deceptively similar to:

- the name of an existing filing entity or foreign filing entity;
- a name reserved with the secretary of state under chapter 5, subchapter C; or
- a name registered with the secretary of state under chapter 5, subchapter D.

This prohibition does not apply if the original entity or person who registered or reserved the name gives written consent for the use of the similar name.

DIGEST: The bill would require that a name under which a filing entity or foreign filing entity registered to transact business in Texas be distinguishable in the records of the secretary of state from:

- the name of an existing filing entity or foreign filing entity;
- a name reserved under chapter 5, subchapter C or registered under chapter 5, subchapter D; or

- an assumed name under which a foreign filing entity was registered to transact business in Texas because the foreign entity's name was not available.

This requirement would not apply if:

- the original entity or person who registered or reserved the name gave written consent for its use and filed an instrument with the secretary of state that changed the entity's name or withdrew the name's reservation or registration; or
- the filing entity or foreign filing entity delivered to the secretary of state a certified copy of the final judgment of a court establishing the right of the filing entity or foreign filing entity to have the name.

CSHB 2753 would amend provisions regarding the reservation and registration of names in subchapters C and D of Business Organizations Code, ch. 5 to conform to these changes.

The bill would take effect June 1, 2016.

SUPPORTERS SAY:

CSHB 2753 would make Texas more business friendly, while simplifying the name-filing process for entities and helping to prevent fraud. The bill also would make Texas law on entity names consistent with that of other states.

Texas's current "similar or deceptively similar" standard makes it difficult for businesses that operate out of state to file in Texas because it is more stringent than the "distinguishable on the record" standard used by most other states. Moreover, the filing process in Texas is more expensive than in other states because of the difficult and confusing standard in current law. CSHB 2753 would make the process for businesses to pick a name more uniform with requirements in other states.

The entity name standard Texas currently uses is complicated and difficult to implement. The most common reason for the secretary of state to reject a filing is because it fails the name standard. This can cause frustration for businesses because it is unclear which names are acceptable. Training

staff in the office of the secretary on the standard also is difficult, and the law's complexity results in inconsistent decisions. This bill would modernize and simplify the standard to minimize confusion both in the secretary of state's office and among filing entities. While some say this bill would attempt to solve a problem that does not exist, the proof of the issue is in the billable hours of attorneys hired to file papers with the secretary of state on behalf of business entities.

CSHB 2753 would prevent fraud by requiring an entity or person that consented to another's use of an indistinguishable name to change its own name. Under current law, only written consent is required, which can be easy to forge. The bill also would protect a small business from being strong-armed into consenting to a name that was indistinguishable from the name of a larger company, particularly when the small business might not understand the ramifications of consenting. By requiring the consenting business to change its name, the bill would ensure that the business understood that providing consent could result in a significant change.

Requiring consenting businesses to change their names would not increase conflict between businesses. This requirement is necessary because the new standard would be more open to accepting names that were similar to existing names. If businesses were allowed to keep their own names while allowing another entity to use a similar name, it would create confusion in the secretary of state's office. The requirement also would be important for business acquisitions in which an entity was created to take over another entity. The existing entity could consent to the use of its original name and then change its name, allowing the new entity to carry the existing name along with it.

CSHB 2753 would not increase litigation among businesses because the changes primarily would be administrative, helping the secretary of state approve or reject business entity filings. Specifically, it would not increase trademark litigation because, as the secretary states in letters confirming entity formation, the issuance of a certificate of filing does not authorize the use of a name in Texas in violation of the rights of another under federal, Texas, or common law. The fundamental rights of businesses would not be changed by this bill.

OPPONENTS SAY:

CSHB 2753 would not be an improvement on the current standard in Texas and could invite increased trademark conflicts.

The current standard in Texas protects businesses from new entities acquiring names that are similar to their own. The existing exception for businesses that provide written consent to authorize another entity to have a similar name allows businesses to amicably resolve such conflicts. There is not a problem with written consent letters being forged, and the burdensome requirement for a business to change its name could result in businesses declining to give consent, leading to conflict among entities.

The current standard in Texas has the ancillary effect of decreasing trademark litigation because it provides a first-level review for names that might be deceptively similar. Adopting a less stringent standard for entity names might make it easier for businesses to file in Texas, but it also would allow businesses to have names that were similar to one another. Existing businesses might worry that a new entity being granted a similar name would confuse its customers or would otherwise infringe upon its trademark rights, which could prompt lawsuits to settle the issue.

SUBJECT: Exempting certain motor vehicle transfers from the sales tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — Steve McKelvey, Toyota Motor North America; (*Registered, but did not testify*: Laird Doran, Gulf States Toyota, the Friedkin Group; Chris Shields, Toyota Motor Corporation North America; Tom Devany, Toyota Motor Sales USA)

Against — None

On — (*Registered, but did not testify*: Eric Stearns, Texas Comptroller of Public Accounts)

BACKGROUND: Tax Code, sec. 152.021 requires that a tax be imposed on the retail sale of every motor vehicle sold in this state. Sec. 152.001(2), defines "retail sale" to mean a sale of a motor vehicle unless:

- the purchaser is a franchised dealer who intends to resell the vehicle as a new motor vehicle or use it for purposes under Transportation Code, ch. 503;
- the purchaser holds a dealer's general distinguishing number and intends to resell the vehicle or use it for purposes under Transportation Code, ch. 503; or
- the sale was made to a franchised dealer for the purpose of entering into a contract to lease the vehicle to another person under certain conditions.

Occupations Code, sec. 2301.002(19), defines "manufacturer" as a person who manufactures or assembles new motor vehicles. Occupations Code, sec. 2301.002(11) defines "distributor" as a person, other than a manufacturer, who distributes or sells new motor vehicles to a franchised

dealer or enters into franchise agreements with franchised dealers on behalf of the manufacturer.

DIGEST:

CSHB 2400 would exclude from the definition of "retail sale" in Transportation Code, sec. 152.021 the sale of a new motor vehicle in which the purchaser was a manufacturer or distributor who acquired the motor vehicle either for the exclusive purpose of sale or for purposes allowed under Transportation Code, ch. 503. Such sales would be exempted from the motor vehicle sales tax.

This bill also would impose a $25 use tax, which applies to metal dealer's plates under current law, on each person issued a manufacturer's license plate, as authorized by Transportation Code, ch. 503. The Department of Motor Vehicles would have to receive payment of this tax before issuing the manufacturer plates.

This bill would take effect September 1, 2015, and would not affect tax liability accruing before that date.

SUPPORTERS SAY:

CSHB 2400 would reflect current practice by clarifying the definition of "retail sale" to specifically exclude motor vehicles transferred from a manufacturer to a distributor. The comptroller has never taxed transfers from manufacturers to distributors, but this bill would provide clarification to prevent confusion and to ensure these transfers continue not to be taxed.

Current law provides that sales from manufacturers to dealers excluded from the definition of "retail sale," which excepts them from the motor vehicle sales tax. However, some manufacturers sell their cars to distributors or other entities not classified as dealers. This means that the motor vehicle sales tax, in theory, could be applied to a sale that is clearly not a retail sale. This bill would resolve this concern and clarify the intent of the law.

Additionally, this bill would have a modest positive fiscal impact because it would place a $25 use tax on manufacturer's plates. Some distributors and manufacturers conduct extensive road testing in new vehicles, which requires a manufacturer's license plate. Although they serve the same

function as dealer's plates, manufacturer's plates currently are not subject to the tax. This bill would make the application of the use tax more consistent.

OPPONENTS SAY:

CSHB 2400 could unintentionally change the meaning of retail sales because of a vague reference in the bill. Specifically, the bill notes that the sale of a new motor vehicle to a distributor or manufacturer for the purposes allowed under Transportation Code, ch. 503 would not be considered a retail sale. However, ch. 503 covers a variety of topics beyond the intent of the bill. The bill instead should reflect the language of SB 1125 by V. Taylor as it was reported from Senate committee, which refers specifically to Transportation Code, sec. 503.064 in the revised definition of the definition of "retail sale."

NOTES:

The companion bill, SB 1125 by V. Taylor, was placed on the intent calendar on April 21 and not again placed on the intent calendar on April 22.

SUBJECT: Extending the initial two-year inspection period to certain fleet vehicles

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Pickett, Martinez, Burkett, Y. Davis, Fletcher, Harless, Israel, Murr, Paddie, Phillips, Simmons

0 nays

1 absent — McClendon

WITNESSES: For — Don Schwent, EAN Holdings, LLC dba Enterprise, Alamo and National Car Rental; (*Registered, but did not testify*: Galt Graydon, Avis/Budget)

Against — None

On — (*Registered, but did not testify*: Jeremiah Kuntz, Texas Department of Motor Vehicles; James Bass, TxDOT)

BACKGROUND: Transportation Code, sec. 548.101 requires a general one-year inspection period for vehicles. Sec. 548.102 permits a two-year initial inspection period for passenger cars or light trucks that are sold in the state, that have never been registered in any state, and that have a model year that is the year of sale or the preceding year.

Sec. 501.0234(b)(4) exempts certain commercial fleet buyers from a dealer requirement to apply for the registration and title of a vehicle. Commercial fleet buyers handle their own titling and registration process, rather than the dealer, if they are authorized county deputies and use the dealer title application process to submit title information to the county.

HB 2305 by E. Rodriguez, enacted by the 83rd Legislature in 2013, eliminated separate vehicle stickers for inspection and registration. This has required buyers of fleet vehicles, including rental car companies, to keep track of inspection periods of different lengths for their vehicles that were purchased in and out of Texas

DIGEST:

HB 2115 would extend the initial two-year inspection period to include passenger cars and light trucks purchased for use in this state by a commercial fleet buyer, as described by Transportation Code, sec. 501.0234(b)(4). The vehicle would not have to be sold in the state, but as required in current law for the two-year inspection period, the vehicle could not have been previously registered in a state and would have to have a model year that was the date of sale or the preceding year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Ability of pharmacists to administer epinephrine

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Crownover, Naishtat, Blanco, Coleman, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

1 absent — Collier

WITNESSES: For — Charlotte Weller and Anjanette Wyatt, Texas Pharmacy Association; Carole Hardin-Oliver; (*Registered, but did not testify*: Nario Rene Cantu, Alliance of Independent Pharmacists, Texas Pharmacy Association; Audra Conwell and Jennifer Yoakum, Alliance of Independent Pharmacists; Dennis Wiesner, HEB; Bruce Biundo, PCCA; John Heal, Pharmacy Buying Association DBA Texas TrueCare Pharmacies; Rebecca Waldrop, Sanofi; Julie Spier and Bradford Shields, Texas Federation of Drug Stores; Duane Galligher, Texas Independent Pharmacies Association; Dan Finch, Texas Medical Association; Linda McMahon, Justin Fancher, Carter High, Brom Hoban, Justin Hudman, Steven Maddox, Robert Mayes, Carol Reagan, David Spence, and Damita Wyatt, Texas Pharmacy Association; Rene Garza, Texas Pharmacy Association, Alliance of Independent Pharmacists of Texas; Deanna L. Kuykendall, Texas Trial Lawyers Association; Alexandria Ybarra, Texas Tech University Health Sciences Center, American Pharmacists Association-Academy of Student Pharmacists, Texas Pharmacy Association; Neal Simon, Texas Tech University Health Sciences Center School of Pharmacy, Texas Pharmacy Association; Delilah Blanco, Texas Tech University Health Sciences Center School of Pharmacy, American Pharmacists Association-Academy of Student Pharmacists, Texas Pharmacy Association; and 23 individuals)

Against — (*Registered, but did not testify*: Daniel Leeman)

On — (*Registered, but did not testify*: Gay Dodson, Texas State Board of Pharmacy)

BACKGROUND:

Epinephrine is a medication used to treat life-threatening allergic reactions, also known as anaphylaxis. Common epinephrine auto-injector devices include brands such as Adrenaclick, Auvi-Q, and EpiPen.

DIGEST:

CSHB 1550 would allow a pharmacist to administer epinephrine through an auto-injector device to a patient in an emergency situation, according to rules that the Texas State Board of Pharmacy would adopt under the bill.

The rules would provide that a pharmacist could administer epinephrine through an auto-injector device and could maintain, administer, and dispose of these devices according to the board's rules. The bill would require a pharmacist who administered epinephrine through an auto-injector device to report the use of the device to the patient's primary care physician if the patient had a primary care physician.

A pharmacist would not be liable for civil damages for administering epinephrine in good faith under the requirements of the bill unless the pharmacist's act was willfully or wantonly negligent. Under the requirements of the bill, administering epinephrine through an auto-injector device would not constitute the unlawful practice of any health care profession.

The bill would prohibit a pharmacist from receiving payment for the administration of epinephrine but would allow a pharmacist to seek reimbursement for the cost of the device itself.

The bill would take effect September 1, 2015.

The Texas State Board of Pharmacy would have to adopt rules governing the bill by January 1, 2016. Until then, a pharmacist could administer epinephrine through an auto-injector device as allowed by law in effect before September 1, 2015.

SUPPORTERS SAY:

CSHB 1550 would improve public safety and potentially save lives by allowing pharmacists to administer an epinephrine auto-injector to a patient in an emergency situation. The bill also would ensure that a pharmacist who had the ability and means to save someone's life was not restricted because of the law.

Pharmacists are among the most accessible health care providers, especially in emergency situations, and have the education and training necessary to administer epinephrine in an emergency. Epinephrine auto-injectors typically are designed for patients to administer themselves with little training, and the bill would allow pharmacists to administer the medication in an emergency as well. CSHB 1550 would not require a patient to pay the pharmacist a fee for administering the medication, which would minimize the financial cost to the patient.

The bill also would ensure that the patient's physician could monitor the patient in case of any adverse reaction to the drug by requiring a pharmacist to notify the patient's physician after administering the epinephrine. When a patient is going into anaphylactic shock, administration of epinephrine is very time sensitive — the patient cannot wait for a doctor's appointment. The bill would address the urgency of the situation by allowing a pharmacist, who is a health care professional with extensive training in drug interaction, to provide the medication. Additionally, the bill is permissive, so it would not require a pharmacist to administer epinephrine, only allow a pharmacist to do so if needed.

OPPONENTS SAY:

Epinephrine can be cardiotoxic. For this reason, it should not be administered by a pharmacist but instead by a doctor in a doctor's office or by someone who can respond to cardiotoxicity.

NOTES:

The companion bill, SB 1361 by Kolkhorst, was referred to the Senate Health and Human Services Committee on March 18.

SUBJECT: Establishing a center for public safety training in the Rio Grande Valley

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — Ruben Villescas, City of Pharr Police Department; Shirley Reed, Mario Reyna, and Victor Valdez, Jr., South Texas College; (*Registered, but did not testify*: Holly Deshields, City of McAllen; Sergio Contreras, City of Pharr; Elizabeth Lippincott, Texas Border Coalition; Lon Craft, TMPA)

Against — None

On — (*Registered, but did not testify*: Kim Vickers, Texas Commission on Law Enforcement)

BACKGROUND: HCR 219 by Muñoz, enacted by the 83rd Legislature in 2013, outlined the development of the Regional Center for Public Safety Excellence. The bill described the growing need for law enforcement personnel in the Rio Grande Valley region and the collaboration that would take place to develop the regional center's training programs.

DIGEST: HB 1887 would amend the Education Code to create the Regional Center for Public Safety Excellence to provide education and training for law enforcement personnel in the Rio Grande Valley. The instruction provided by the regional center would include:

- education and training toward an associate of applied science degree or certificate or another public safety or law enforcement-related associate degree or certificate;
- a baccalaureate degree for applied science or applied technology authorized by the Texas Higher Education Coordinating Board;
- a Texas Commission on Law Enforcement (TCOLE) officer

certification; and
- a continuing education certification.

The bill would require South Texas College to administer the regional center in partnership with political subdivisions and participating school districts in the Rio Grande Valley. The headquarters of the regional center would be located at the South Texas College in Pharr, Texas. The center could use property and facilities at other locations in Hidalgo and Starr counties.

The program or course curriculum developed by the regional center would be required to satisfy any requirements imposed by TCOLE for the center to operate as a commission-approved training provider.

The Texas Commission on Law Enforcement could authorize reimbursement to a political subdivision or state agency for expenses incurred by personnel attending training offered by the regional center.

The regional center would be allowed to solicit and accept gifts and grants from any public or private source for the regional center, and the Legislature also could appropriate money for the regional center.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1887 would increase necessary access to training opportunities for officers in the Rio Grande Valley region and, in turn, improve public safety and border security. The Texas Workforce Commission projects an estimated 22 percent increase in police officer positions in the South Texas region in the next 10 years, but only four police academies in the counties of Hidalgo and Starr offer basic police officer courses certified by TCOLE. In fact, 28 agencies in South Texas lack police academies. HB 1887 would provide law enforcement in the region with nearby training.

The training provided at the regional center also would provide officers with college credit toward either an associate's or a bachelor's degree, while the four police academies in the area would not. The training

programs would satisfy any official education standards imposed by the commission.

HB 1887 would provide specialized training and continuing education that officers in the region currently must travel far to obtain. Officers in the Rio Grande Valley usually have to travel to College Station or San Antonio for specialized training or continuing education courses at the expense of local police departments. The bill would ensure officers did not have to leave the region for necessary training. The city of Pharr is donating between 50 and 60 acres of land to make the center large enough to house various specialized facilities.

Although South Texas College already has the authority without the passage of HB 1887 to establish the regional center, there are many benefits to codifying the center into statute. The statute would serve as a model for future development of more regional centers of this kind that provide specialized training and college credit. Having the regional center in statute also would provide access to state and federal funding, including from the Department of Homeland Security.

The bill could be amended to remove a provision that would allow the commission to authorize reimbursements to political subdivisions or state agencies for officer training costs, making the availability of funding for these reimbursements no longer a concern.

OPPONENTS SAY:

HB 1887 is not necessary because South Texas College already has full authority to establish such a center and provide courses for college credit.

The provisions in HB 1887 that would allow the commission to reimburse a political subdivision or state agency would be difficult to implement if funds were not appropriated to the commission. There is currently no other funding that is provided to TCOLE to make these reimbursements.

NOTES:

The author intends to offer a floor amendment to remove sec. 130.093(e) from section 1 of the bill, eliminating a provision that would allow the Texas Commission on Law Enforcement to authorize reimbursement to a political subdivision or state agency for expenses incurred by personnel attending training programs at the regional center.

SUBJECT: Requiring a study utilizing prenatal surgery to treat birth defects.

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Crownover, Naishtat, Blanco, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Coleman, Collier

WITNESSES: For — (*Registered, but did not testify*: Heiwa Salovitz, Adapt of Texas; Michelle Romero, Texas Medical Association; Amy Tucker)

Against — None

On — (*Registered, but did not testify*: Rick Allgeyer, Health and Human Services Commission; John Seago, Texas Right to Life)

BACKGROUND: Health and Safety Code, sec. 87.001 defines a birth defect as a physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

DIGEST: HB 606 would require the Health and Human Services Commission to conduct a study evaluating the benefits of prenatal surgical procedures to treat birth defects. The procedures studied would include:

- fetoscopic placental laser ablation;
- maternal-fetal surgery; and
- any other type of prenatal surgical procedure that is or becomes the standard of practice for treating a birth defect.

The study would analyze the difference in average total cost to Medicaid, private health insurance, individuals, and other payors between conducting a prenatal surgical procedure and a postnatal procedure to treat a birth defect, including any continuing treatments needed after either procedure.

The study also would analyze any improvement in survival rates, long-term outcomes, and quality of life for children with birth defects following a prenatal surgical procedure, as compared to a postnatal procedure, to treat a birth defect.

On or before December 1, 2016, the commission would be required to submit a written report on the results of the study to the governor, lieutenant governor, House speaker, House Committee on Public Health, and Senate Committee on Health and Human Services.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 606 would require a study on prenatal surgery that could help determine the most cost-effective and successful procedures for treating birth defects. Prenatal surgery has the potential to completely correct a debilitating, chronic health condition in utero, which could save many lives and also help the state save money on its Medicaid program.

The study primarily would focus on the first two procedures — fetoscopic placental laser ablation and maternal-fetal surgery — but is written to allow for some flexibility so advances in prenatal medical procedures and technology could be taken into account.

This bill could help enable life-saving treatment for fetal medical conditions once thought to be terminal and could give pregnant mothers hope and a chance to save their baby's life or improve the baby's quality of life.

OPPONENTS SAY:

The procedures to be studied under HB 606 could be too broadly defined. The bill would require the study of "any other types of prenatal surgical procedure that is or becomes the standard of practice for treating a birth defect," and it is unclear how this standard would be measured.

SUBJECT: Creating a regional emergency communications district in Central Texas

COMMITTEE: Special Purpose Districts — committee substitute recommended

VOTE: 5 ayes — D. Miller, Alvarado, Faircloth, Fallon, Zedler

0 nays

2 absent — Martinez Fischer, Stickland

WITNESSES: For — (*Registered, but did not testify*: Michelle Romero, Texas Medical Association)

Against — None

On — (*Registered, but did not testify*: Kelli Merriweather and Brian Millington, Commission on State Emergency Communications)

BACKGROUND: In 1983, the 68th Texas Legislature authorized statutory emergency communication districts to provide local 9-1-1 service. The Commission on State Emergency Communications was created in 1987 to implement and administer 9-1-1 services throughout the state. Certain 9-1-1 emergency communications districts were providing 9-1-1 service within their boundaries, and to provide service to the rest of the state, the Commission on State Emergency Communications implemented service with a program administered through regional planning commissions. Currently, 52 districts operate within 23 regional planning commissions delivering 9-1-1 service.

The Central Texas Council of Governments (CTCOG) serves Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba counties. CTCOG does not have an emergency communications district operating within its territory and operates a 9-1-1 system as a regional planning commission.

DIGEST: CSHB 737 would amend Health and Safety Code, ch. 772 to authorize the Central Texas Council of Governments (CTCOG), which serves Bell,

Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba counties, to create a regional emergency communications district. The district would be governed by the CTCOG board and become effective upon all counties and municipal governing bodies in the region adopting a resolution.

The bill would include standard definitions and procedures typical of emergency communications districts related to:

- the powers and duties of the district and the board;
- the budget and annual report;
- the provision of 9-1-1 services;
- the imposition and collection of 9-1-1 emergency service fees;
- issuance and repayment of bonds;
- the transfer of assets from the regional planning commission to the district; and
- dissolution procedures if a district is dissolved.

The bill also would change the definition of "emergency communication district" to include districts authorized by the provisions of the bill.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 737 would enable the Central Texas Council of Governments (CTCOG) to implement a much-needed emergency communications district. This also would speed up the implementation of NextGeneration9-1-1 (NG9-1-1), which offers added capacity and efficiencies, as well as expanded digital services such as texting, video and automated warning systems.

Currently, the 9-1-1 system in Central Texas operates over an analog system that cannot use digital data such as texts and digital feeds. It also is not compatible with the next generation technology being deployed in the major metropolitan areas of the state. This lack of capability can cause safety gaps during emergency situations when a rapid response is required.

CTCOG has no emergency communication districts operating within its territory, which places it at a disadvantage in implementing NG9-1-1.

Because emergency communication districts have a predictable source of revenue from emergency service fees paid by district residents to support full deployment of NG9-1-1, a regional planning commission that included one or more emergency communications districts within its territory would be more likely to have the necessary digital infrastructure for NG9-1-1.

The 9-1-1 service fees that would go to CTCOG are deposited into a general revenue dedicated fund account and then appropriated from the Commission on State Emergency Communications, rather than being received directly. Capturing the fees in a general revenue dedicated account has created an unpredictable revenue source for CTCOG, which has resulted in fees paid by area citizens being used to certify the budget rather than for their intended purpose. According to the Legislative Budget Board, the 9-1-1 service fees general revenue dedicated account is among those with the highest balances ($177.8 million) counted toward certification of the 2014–15 budget.

This unpredictable revenue source has resulted in local governmental entities having to subsidize the system with local funds. In Bell County alone, several million dollars of local tax revenue is required to operate a system that still falls short of providing the same level of service received by areas served by 9-1-1 emergency communications districts. CSHB 737 would create an emergency communications district that would benefit from an instant influx of about $1 million with no additional taxes, just fees already paid by Central Texans. Creating a district would help ensure a predictable revenue stream to support network and capital contracts necessary for full deployment of a digital network for emergency communication services.

OPPONENTS SAY:

CSHB 737 would create an unnecessary, new layer of bureaucracy by creating a special district that would be duplicative of existing service. The Commission on State Emergency Communications already handles 9-1-1 service for one-third of the state’s population, largely in rural areas. Special purpose districts such as emergency communications districts do not provide services that could not be provided by local governments. The cities and counties should have the power to gather revenue and provide services. An extra layer of bureaucracy could be especially problematic

because these districts have the ability to issue bonds and there is not much oversight or awareness of how much debt a special purpose district can create.

SUBJECT: Reactivating license of officers with 10 years of service and new training

COMMITTEE: Homeland Security & Public Safety — committee substitute recommended

VOTE: 8 ayes — Phillips, Nevárez, Burns, Johnson, Metcalf, Moody, M. White, Wray

1 nay — Dale

WITNESSES: For — Martin Cuellar, Fred Garza, Webb County Sheriff's Office; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Bill Elkin, Houston Police Retired Officers Association; Lon Craft, TMPA)

Against — None

On — Kim Vickers, Texas Commission on Law Enforcement

BACKGROUND: Occupations Code, sec. 1701.316 requires the Texas Commission on Law Enforcement to adopt rules establishing requirements for reactivation of a peace officer's license after a break in employment. These rules appear in 37 Texas Administrative Code, Part 7, ch. 219.

Occupations Code, sec. 1701.351 requires peace officers to complete at least 40 hours of continuing education programs once every 24 months. The commission may suspend the license of a peace officer who does not comply.

DIGEST: CSHB 872 would require the Texas Commission on Law Enforcement to reactivate a peace officer's license after the officer had a break in employment if the former officer:

- had completed at least 10 years of full-time service as a peace officer in good standing before the break in employment;
- met current licensing standards;
- completed an online or in-person supplemental course of no more

than 120 hours, as well as other in-person training requirements of up to 40 hours;
- passed a peace officer reactivation exam;
- filed an application; and
- paid any required fees.

This bill would take effect September 1, 2015, and would apply only to an application for reactivation of a license filed on or after that date.

SUPPORTERS SAY:

CSHB 872 would ensure that enough peace officers were available to fill an increasing number of vacancies by allowing qualified officers with many years of experience to reenter the force without having to go through the full police academy again. This would help compensate for the low numbers of new police academy graduates available to fill positions at understaffed state agencies.

Before reactivating peace officer licenses, the bill would ensure that all former officers were thoroughly trained on current practices and procedures by requiring them to pass a reactivation exam and to complete an extensive supplemental training course, as well as many hours of hands-on training. The officer re-entrance exam would be developed by the Texas Commission on Law Enforcement. The commission develops all exams for new officers and would ensure that the re-entrance exam adequately tested competency for reentry into the police force.

CSHB 872 also would save taxpayers tens of thousands of dollars in unnecessary duplication of training. The officers eligible to reenter the force under this bill would have at least ten years of service experience and long since would have completed a basic training course and many years of continuing education.

OPPONENTS SAY:

CSHB 872 would allow officers who had allowed their licenses to lapse and who might not have served in uniform for many years to reenter the force with only minimal training requirements of 120 hours, well below the 643 hours of training required for new officers.

Despite their many years of law enforcement experience, many officers allowed to re-enter the force under this bill would do so without the up-to-

date experience and training necessary in such a dynamic profession. Each officer is required to complete 40 hours of continuing education every two years, so an officer who had been out of the service for many years might be hundreds of hours behind current officers on the latest training. The bill would not limit how many years an officer could have been out of service before trying to reenter the force with only minimal training. In addition, the re-entrance exam under CSHB 872 that officers would have to pass could be a scaled down version of the officer entrance exam and might not adequately test an officer's competence to reenter the force.

SUBJECT: Shortening the approval period for grants under the Texas Enterprise Fund

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 9 ayes — Button, Johnson, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Villalba, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: TJ Patterson, City of Fort Worth; Jay Barksdale, Dallas Regional Chamber; Drew Scheberle, Greater Austin Chamber of Commerce; Sarah Matz, TechAmerica; Bill Hammond, Texas Association of Business; Carlton Schwab, Texas Economic Development Council; Max Jones, Greater Houston Partnership)

Against — None

On — (*Registered, but did not testify*: Jose Romano, Office of the Governor)

BACKGROUND: Government Code, sec. 481.078 establishes the Texas Enterprise Fund. The Texas Enterprise Fund is a trusteed program within the Office of the Governor that provides grants for economic development, infrastructure and community development, job training programs, and business incentives. The governor is authorized to negotiate grants from the fund on behalf of the state and must have the approval of the lieutenant governor and the House speaker before awarding grants. If the lieutenant governor and House speaker have not approved of the grant after 91 days, the grant is considered disapproved.

DIGEST: HB 1701 would amend Government Code, sec. 481.078(e) to reduce from 91 days to 31 days the amount of time that the lieutenant governor and House speaker were provided to approve a proposal.

The bill would take effect September 1, 2015, and would apply only to a proposal submitted on or after that date.

SUPPORTERS SAY:

HB 1701 would help create jobs by making Texas more competitive in bidding for economic development projects with other states. When large companies are deciding where to locate, typically they have multiple cities around the world competing for their business. Speeding up the approval process for awarding grants could give Texas an edge over other states.

By the time a company applies for an economic incentive grant, usually it has already completed months of work on the project and negotiated tax breaks and grants from the municipalities where it is trying to install the project. Some corporations will not consider locating in Texas because they prefer not to wait another 90 days on top of this process. Other states have streamlined their grant approval processes, often approving grants the same week and in some cases the same day that the state receives an application. By reducing the approval period from 91 days to 31 days, this bill would make Texas even more competitive in landing these projects.

The Texas Enterprise Fund is meant to be a deal-closing fund, which requires speed and agility. The state has already proved it can speed up the grant approval process up without jeopardizing transparency or thoroughness. When Texas approved a $40 million grant from the Texas Enterprise Fund for Toyota to consolidate its North American corporate, manufacturing, marketing, and sales operations in Plano, the lieutenant governor and the House speaker approved the deal in a matter of days, showing that Texas would be able to shorten the grant approval period without putting due diligence at risk.

OPPONENTS SAY:

HB 1701 could reduce transparency in the administration of the Texas Enterprise Fund, which gives away sizable portions of taxpayer money to large private corporations. This should not be taken lightly. Reducing the time that the lieutenant governor and House speaker were provided to consider and approve a deal could increase the risk of a questionable deal being accepted in haste. Texas benefits from a large number of highly educated workers, a low cost of living, and low utilities rates. Shortening the approval window the state is not necessary to attract jobs to Texas.

SUBJECT: Requirements for certain annexations by general-law municipalities.

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Deshotel, E. Thompson, Bell, Cyrier, Krause, Lucio, Sanford

0 nays

WITNESSES: For — (*Registered, but did not testify*: June Deadrick, CenterPoint Energy; Bill Stevens, Texas Alliance of Energy Producers; Stephen Minick, Texas Association of Business)

Against — None

BACKGROUND: Local Government Code, ch. 43, subch. B, governs municipal annexation. Sections 43.033 and 43.034 describe annexations pursued without the consent of the residents, voters, or property owners in the area to be annexed.

DIGEST: HB 1277 would create additional requirements for a general-law municipality that wished to annex an area in which 50 percent or more of the property to be annexed was primarily used for commercial or industrial purposes. For a municipality authorized to annex the area under the Local Government Code, the bill would require the municipality to obtain the written consent of the owners of a majority of the property in the area to be annexed. The consent would have to include a description of the area to be annexed and be signed by the property owners.

These annexation provisions would be an exception to the sections of Local Government Code that describe requirements for annexations that can be pursued without the consent of area residents, voters, or landowners (secs. 43.033 and 43.034).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply only to annexations for which the first hearing notice, as required under the Local Government Code,

was published on or after that date.

SUPPORTERS SAY:

HB 1277 would make annexation a fairer process by requiring consent of commercial and industrial landowners in certain cases where land was subject to annexation without consent.

Annexation does not necessarily benefit all landowners. Properties being used for commercial or industrial purposes often do not need the services that they could receive if annexed to a municipality. In addition, they could be subject to more taxes if they were annexed.

In most cases, current law allows for a majority of landowners or registered voters in an area that has been annexed without consent to vote by petition for disannexation beginning one year after the annexation has occurred. This process can put owners of larger pieces of commercially or industrially purposed land at a disadvantage. While commercial property owners might own a greater percentage of the land in an area being annexed, they could be outnumbered by multiple voters who reside on smaller pieces of property in that area. HB 1277 would help level this playing field by requiring that commercial property holders who owned more than half of an area of land give their consent before it was annexed.

OPPONENTS SAY:

HB 1277 would give greater power to business owners than other property owners or residents with respect to annexation in certain situations. The bill also could create additional barriers for municipalities needing to annex areas for legitimate reasons, such as to expand their tax bases.

SUBJECT: Establishing literacy achievement academies for pre-k to grade 3 teachers

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Bohac, Deshotel, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Allen, Dutton

WITNESSES: For — Stephanie Stoebe, Association of Texas Professional Educators (ATPE); Ted Melina Raab, Texas American Federation of Teachers (AFT); Bruce Gearing, Texas Association of Community Schools (TACS); Buck Gilcrease, Texas Association of School Administrators, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Courtney Boswell, Texas Institute for Education Reform; Rona Statman, The Arc of Texas; (*Registered, but did not testify*: Mike King, Bridge City ISD; Gina Mannino, Bridge City ISD; John Marez, Corpus Christi ISD; Jodi Duron, Elgin ISD; Randy Willis, Granger ISD; Alicia Lee, Greater Houston Partnership; Howell Wright, Huntsville ISD; Betsy Singleton, League of Women Voters; Berhl Robertson, Jr., Lubbock ISD; Jimmy Parker, Lubbock Roosevelt ISD; Keith Bryant, Lubbock-Cooper ISD; Bill Hammond, Texas Association of Business; Barry Haenisch, Texas Association of Community Schools; Justin Yancy, Texas Business Leadership Council; Paige Williams, Texas Classroom Teachers Association; Janna Lilly, Texas Council of Administrators of Special Education; Cameron Petty, Texas Institute for Education Reform; Ellen Arnold, Texas PTA; Colby Nichols, Texas Rural Education Association; Portia Bosse, Texas State Teachers Association; Monty Exter, the Association of Texas Professional Educators; Grover Campbell, Texas Association of School Boards; Adrianna Cuellar Rojas, United Ways of Texas)

Against — Zenobia Joseph; (*Registered, but did not testify*: Trevor Dupuy)

On — Steven Aleman, Disability Rights Texas; (*Registered, but did not testify*: Monica Martinez, Texas Education Agency)

BACKGROUND:

Education Code, sec. 21.455 requires the commissioner of education to develop and make available professional development institutes for teachers who provide instruction in mathematics to students in grades 5-8.

Sec. 21.4551 requires the commissioner to develop and make available reading academies for teachers of students in grades 6-8.

DIGEST:

CSHB 1843 would amend Education Code, ch. 21 to require the commissioner of education to develop and make available literacy achievement academies for teachers of prekindergarten through grade 3. These academies would include training in effective and systematic instructional practices in reading, including phonemic awareness, phonics, fluency, vocabulary, comprehension, and research-based practices to address the needs of students with reading disorders.

The commissioner would adopt criteria to select teachers who could attend a literacy achievement academy. In adopting the criteria, the commissioner would have to include teachers who instruct students with reading disorders, including special education teachers, and to give priority to teachers employed by school districts in which at least 50 percent of the students enrolled were educationally disadvantaged.

Teachers attending a literacy achievement academy would receive a stipend in an amount determined by the commissioner. This stipend would not be considered when determining whether a district was paying the teacher the minimum monthly salary, as provided by Education Code, sec. 21.402.

The commissioner could request that regional education service centers assist with training and activities related to the literacy achievement academies.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1843 would allow Texas teachers to benefit from the professional development opportunities offered by literacy academies, which could help improve outcomes for students, particularly those who are educationally disadvantaged.

Studies have shown that literacy academies can show positive gains for students in prekindergarten through third grade and on reading and writing assessments for fourth graders. Reading scores have remained stagnant for grades 3- 8 during the past few years on the State of Texas Assessments of Academic Readiness (STAAR) exams. The state's English-language learner population continues to grow and now makes up almost 18 percent of the student population. These academies could help ensure consistent instruction for these students.

Teachers could be trained in new instructional materials and methods they could immediately apply to the classroom. The bill could help teachers who experience a disconnect between the pedagogy of teacher preparation programs and the real-life challenges of teaching educationally disadvantaged children, who make up a large portion of the Texas student population.

The stipend associated with the bill would provide an incentive and support for state educators to develop skills that would impact learning for the state's diverse population of students in prekindergarten to third grade. Costs associated with the bill would pay for the stipend and for updates to literacy content. Teachers attending the academies could become expert resources for their school districts and could provide them with instructional resources and insight.

OPPONENTS SAY:

CSHB 1843 would be well intentioned but could amount to another expensive education initiative that would not necessarily produce measurable results for students. Similar efforts have not proven successful, and this could be another example of the state spending money on programs that demonstrate little progress in improving student achievement and test scores.

OTHER

CSHB 1843 should be expanded to include teachers from more grades.

OPPONENTS SAY:

While the bill could have an impact on the reading levels of students up to third grade, it would not benefit students who have entered fourth grade, which is when STAAR testing begins, and who are already below expected reading levels. The literacy achievement academies program should be expanded to include fourth grade teachers.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 1843 would have a negative net impact to general revenue of about $21 million in fiscal 2016-17. This would include the cost of providing the teacher stipends and developing content.

CSHB 1, the House-passed budget for fiscal 2016-17, contains a contingency rider in Art. 11 for CSHB 1843 that, if adopted, would provide $30 million to the Texas Education Agency to develop literacy achievement academies.

The Senate companion bill, SB 925 by Kolkhorst, was approved by the Senate on April 23.